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Decisions of Speakers of the Legislative Assembly West Bengal

VOLUME IV

*Decisions of Mr. Speaker Iswardas Jalan and
his Deputy, Mr. Deputy Speaker
Asutosh Mallik*

1947—1949

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To

The Speaker

**In whose hands the high tradition
of the Chair rests**

PREFACE

The fourth volume of the Decisions of Speaker of the Legislative Assembly, West Bengal, containing the rulings of Mr. Speaker Iswardas Jalan and his Deputy, Mr. Deputy Speaker Asutosh Mallik, is now published. This volume completed the rulings given by the Speakers of the Legislative Assembly constituted under the Government of India Act, 1935. It is proposed to bring out the rulings given by Speakers of the Legislative Assembly, constituted under the Indian Constitution hereafter in annual volumes. This volume has also been compiled by S. Charu C. Chaudhuri, Special Officer of the West Bengal Legislative Assembly.

A. R. MUKHERJEA,
*Secretary, West Bengal Legislative
Assembly.*

The 1st May, 1952.

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CONTENTS:

	Pages
Preface	
Part I—Decisions of Mr. Speaker Iswardas Jalan	1
Part II—Decisions of Mr. Deputy Speaker Asutosh Mallik	27
Appendix—Full Text of Rulings—	
(1) Ruling on a question of Privilege ..	29
(2) Ruling on a question of Privilege ..	32
(3) Ruling on the admissibility of Bills	34

PART I

*Decisions of Mr. Speaker Iswardas Jalan.
15th August, 1947—25th January, 1950.*

Decisions of Mr. Speaker

Iswardas Jalan

ADJOURNMENT MOTION.

1. ADMISSIBILITY.

Matter capable of being discussed otherwise.

When during the debate on the Budget, it will soon be possible for a member to raise any matter, an adjournment motion on such matters will not be allowed.

Progs: 15th March, 1946, Vol. II, No. 2, p. 123.

2. PROCEDURE.

Statement by Minister in opposing adjournment motions.

The Speaker has a discretion to allow a statement to be made by a Minister in regard to an adjournment motion.

When objection was taken to the moving of an adjournment motion on behalf of the Government the Chief Minister was allowed to make a statement on the subject matter of the adjournment motion.

Progs: 25th November, 1947, Vol. I, p. 14.

3. SUBJECT MATTER.

Matter of day to day administration.

An adjournment motion will not be allowed on a subject ~~matter~~ which affects the day to day administration of the province and is not a matter of urgent public importance.

Progs: 26th November, 1947, Vol. I, p. 22.

Subject matter capable of being discussed otherwise.

An adjournment motion will not be admissible on a subject matter which can be discussed soon during the debate on a motion notice of which has already been given.

Progs: 7th September, 1948, Vol. III, No. 1, p. 13.

Matter capable of being discussed otherwise.

When opportunity will soon be available in the course of debates on cut motions on the Budget to discuss a matter, an adjournment motion on the same matter will not be allowed.

Progs: 16th March, 1949, Vol. V, No. 1, p. 202.

Statement of Leader of the House that matter is sub judice.

An adjournment motion was sought to be moved about *lathi* charge by the police upon

certain refugees. The Leader of the House stated that the matter was *sub judice* and thereupon Mr. Speaker withheld his consent to the adjournment motion. On a subsequent day a member raised a matter of privilege that what was *sub judice* was not the conduct of the police but the conduct of the refugees and that the adjournment motion ought not to have been disallowed. On that, Mr. Speaker said :

“I have heard the point of privilege raised by my honourable friend Janab Khuda Buksh. The position is quite clear. If he refers, to rule 88 of our rules, he will find that the adjournment motion must not deal with a matter on which a resolution could not be moved. Then I shall refer to rule 78 which mentions that no resolution shall refer to any matter which is under adjudication by a court of law. Therefore I have got to carry on the business of the House subject to the rules which have been framed by the House, and no member need be under any misapprehension whatsoever that their privileges are going to be stifled in any way. If I can stretch a point in favour of the opposition, I should like to stretch it in their favour, but I cannot override the clear provisions of our rules. Now I have seen the minutes of yesterday's

business in this House, and I find that the Hon'ble the Leader of the House expressly stated that the question of *lathi* charge, tear-gassing by the police and mass arrest is before the court. The Leader of the House has made a statement upon which I have got to rely. Whenever it is a question of a statement against another statement, the statement made by the gentleman who is in the know of things can be relied upon.

* * * *

If my friend can satisfy that his (Leader of the House) statement is not correct or that his statement is made under some misapprehension, I would follow the ruling which was given by Sir Azizul Haque, namely, that if he can satisfy me that the statement is incorrect, I will waive the question of delay and I will permit the motion to come on, provided it is otherwise allowed under rules."

Progs: 19th January, 1949, Vol. IV, pp. 43, 44.

Statement of Minister that matter is sub judice.

A matter which is *sub judice* cannot be the subject matter of an adjournment motion. If the Leader of the House states that a matter is *sub judice* his statement must be accepted.

Progs: 18th January, 1949, Vol. IV, p. 26.

BILL.

1. AMENDMENT.

Amendments, consequential.

When an amendment inserted "animal" after the word "vessel" in a certain clause, the House granted leave to make consequential amendments in the clause by adding that particular word after the word "vessel" in places wherever it occurred.

Progs: 28th September, 1948, Vol. III, No. 2, p. 136.

Amendments, language of.

When a Bill is introduced in the English language, the amendments proposed to the Bill must also be in the English language. Amendments in any other language cannot be accepted.

Progs: 21st September, 1948, Vol. III, No. 2, p. 37.

Circulation motion for, by member opposing the Bill.

When a member after opposing a Bill sent in a short notice of a motion for the circulation of the Bill for eliciting public opinion, it was ruled that the motion was out of order.

Progs: 10th December, 1947, Vol. I, p. 110.

Clause omission of, whether out of order.

A motion that a ~~clause~~ in a Bill be omitted has the effect of negative vote and is out of order. In this respect the British practice is followed in preference to the American practice.

Progs: 6th January, 1948, Vol. I, p. 199.

Long title, amendment of.

The preamble of a Bill may be the subject matter for amendment but the long title of a Bill is not so. A motion for the amendment of the long title is out of order but an amendment of a long title may be done as consequential amendment by the Secretary under the Legislative Assembly Procedure Rules.

Progs: 10th December, 1947, Vol. I, p. 117.

Select Committee, motion for reference to, effect of passing on main motion.

When an amendment to a motion for the consideration of a Bill to the effect that the Bill be referred to a Select Committee is passed, the original motion falls through.

Progs: 26th November, 1947, Vol. I, p. 58.

2. PROCEDURE.

Debate—Discussion on third reading.

On the third reading of the Bill a member cannot be prevented from making a speech dealing in detail with all the matters relating to the Bill.

Progs: 15th March, 1949, Vol. V, No. 1, p. 200.

Sanction of Governor—Communication of.

When a Government Bill is introduced it is presumed that the necessary formalities have been observed and when it is stated on behalf of Government that the Governor's sanction had been obtained the question should be regarded as closed.

Progs: 18th February, 1948, Vol. II, No. 1, p. 46.

Debate—Putting of questions after Minister has replied.

No question can be put to a Minister after the Minister has replied to the debate on a Bill.

Progs: 26th November, 1947, Vol. I, p. 27.

Sanction of Governor—Communication of.

When a Minister gives an assurance on the floor of the House that the required sanction

of the Governor has been taken, his statement should be accepted.

Progs: 20th September, 1948, Vol. III, No. 2, p. 9.

3. RECONSIDERATION.

Reconsideration of Bill after return by Governor.

When a Bill is returned with certain recommendations by the Governor the entire recommendation must be taken up as a whole and not clause by clause.

Progs: 21st September, 1948, Vol. III, No. 2, p. 55.

BUDGET.

1. CUT MOTIONS.

Cut Motion—Debate.

When a discussion is going on on a particular cut motion, the discussion should be confined to matters about which the Minister in charge of the particular demand is in a position to reply.

Progs: 28th March, 1949, Vol. V, No. 2, p. 287.

Practice—Moving of cut motions.

When there are several cut motions it is better that all the cut motions should be moved and then speeches made thereon.

Progs: 12th March, 1948, Vol. II, No. 2, p. 70.

Several cut motions moved by one member.

When a member moves several cut motions he is entitled to speak only once on all his motions.

Progs: 17th March, 1949, Vol. V, No. 2, p. 21.

2. DEBATE.

Debate—Matter already discussed on another head.

When a matter sought to be discussed on a cut motion regarding a demand for a particular grant had been substantially discussed in regard to another grant, it was ruled that the motion was not out of order but that the discussion should be confined to relevant matters and no irrelevant issue or repetition would be allowed to be made.

Progs: 16th March, 1948, Vol. II, No. 2, p. 160.

Debate—Matter sub judice.

Matter which is *sub judice* cannot be referred to in the course of a debate on a demand for grant.

Progs: 24th March, 1949, Vol. V, No. 2, p. 199.

Debate—Presence of Minister during.

During the discussion of the Budget the Finance Minister ought to be present in the House.

Progs: 24th February, 1948, Vol. II, No. 1, p. 124.

DEBATE.

Debate—Presence of Opposition.

It is desirable that persons who pass remarks upon any side should be present in the House when reply is given by that side.

Progs: 22nd March, 1948, Vol. II, No. 2, p. 314.

Debate—names of persons not before the House, mention of.

Names of persons who are not before the House should not be mentioned.

Progs: 18th March, 1949, Vol. V, No. 2, p. 65.

Debate—Personal allegation.

Personal allegations against members and words which are absolutely in bad taste or derogatory to the position and prestige of other members should not be indulged in.

Progs: 25th March, 1949, Vol. V, No. 2, p. 221.

Debate—Proceedings in Cabinet.

The proceedings of the Cabinet cannot be the subject of any discussion in the House.

Progs: 25th March, 1949, Vol. V, No. 2, p. 225.

Debate—Quotations' extensive.

Although quotations are allowed in speeches during a debate, too much quotations should not be made.

Progs: 17th March, 1949, Vol. V, No. 2, p. 18.

Debate—Quoting from previous speech in extenso.

A member ought not to read *in extenso* from a previous speech made by him in the House.

Progs: 24th March, 1949, Vol. V, No. 2, p. 190.

Debate—Reference to people outside the House.

Every member should remember that he is moving his motion in the House and for the House and whatever he says, he says in order to convince the House and not to convince people outside.

Progs: 28th September, 1948, Vol. III, No. 2, p. 135.

Debate—Right of reply.

A mover of a motion has generally the right of reply but when nothing has been said in the speech of the mover and in the reply to the points raised by the mover, nor has the motion dealt with fully by any other member of the House, the question of a right of reply does not arise. When there is nothing to be said save and except in reply to some of the remarks of a particular member which are not also relevant to the motion before the House, a right of reply cannot be exercised.

Progs: 18th September, 1948, Vol. III, No. 1, p. 249.

Debate—Too much interruption.

Interruption is allowed in the course of a debate if such interruption can be condensed into questions of a few words but interruptions should not take the shape of chaos.

Progs: 21st March, 1949, Vol. V, No. 2, p. 99.

DIVISION.

Taking of votes by asking members to rise in their seats.

When a division was called on the motion for amendment of a clause in a Bill, instead of asking members to go to the division

lobbies, votes were taken under rule by requesting the members to rise in their seats and the names of members who were in favour of the motion were taken down.

Progs: 5th January, 1948, Vol. I, p. 172.

Taking of votes by asking members to rise in their seats.

Although the Speaker has the right to take votes by requesting the members to rise in their seats, the discretion will not be exercised in ordinary circumstances. The procedure of taking votes by requesting the members to rise in their seats is an unusual procedure and that must be adopted only in extreme cases.

Progs: 27th September, 1948, Vol. III, No. 2, p. 112.

LEGISLATION.

Admissibility of a Bill—Power of Legislature.

If the provisions of a Bill, the main object of which is to legislate upon a provincial subject incidentally encroaches upon Central subjects, it will not be *ultra vires* of the Provincial Legislature.

Progs: 6th January, 1948, Vol. I, p. 185.

[For full text of ruling, see page 34.]

Power of Legislature to amend Central Act.

When the subject matter of a Bill is within the jurisdiction of the provincial Legislature, the provincial Legislature has the power to amend a Central Act on that matter.

Progs: 18th February, 1948, Vol. II, No. 1, p. 48.

ORDINANCE.

Ordinance—Objection to laying.

No objection can be raised to the laying of Ordinance under section 88, clause 2, of the Government of India Act.

Progs: 21st November, 1947, Vol. I, p. 9.

PARLIAMENTARY ETIQUETTE.

Members to sit down when Speaker rises.

Whenever the Speaker rises in the Chair the members must sit down.

Progs: 25th March, 1949, Vol. V, No. 2, p. 226.

PERSONAL EXPLANATION.

When certain allegations were made against a member when he was absent, the member was allowed to give a personal explanation on a subsequent day on which he attended the House.

Progs: 21st March, 1949, Vol. V, No. 2, p. 107.

POINT OF ORDER.

A second point of order before the first point decided.

When a point of order has been raised a second point of order cannot be raised before the first point is decided.

Progs: 25th March, 1949, Vol. V, No. 2, p. 225.

PRACTICE.

Bill—Change of year of Bill.

When a Bill was published in the *official gazette* in 1948, but the Bill was introduced in the Assembly in 1949, the Minister-in-charge in moving the motion for consideration read the title of the Bill as of 1949 and Mr. Speaker put it to the House that the House had no objection to the change of the figure 1948 to 1949 and the House allowed the figure to be changed.

Progs: 18th January, 1949, Vol. IV, p. 35.

Budget speech, circulation of.

The Budget is distributed beforehand but the speech of the Minister is distributed amongst the members immediately after the Finance Minister rises to speak.

Progs: 24th February, 1949, Vol. V, No. 1, p. 5.

Budget speech, reading of, by Minister other than Finance Minister.

The Finance Minister read a part of his speech and the rest was allowed to be read by another Minister.

Progs: 24th February, 1949, Vol. V, No. 1, p. 8.

Member absent when motion called—Subsequent permission to move motion.

When a member was absent, when a motion standing in his name was called and afterwards he came and desired to move his motion, the leave of the House was taken for the motion to be moved.

Progs: 17th March, 1949, Vol. V, No. 2, p. 9.

Statement by member on leaving a Party.

A member leaving a party is not entitled to make a statement.

Progs: 22nd March, 1949, Vol. V, No. 2, p. 114.

Withdrawal of motion.

A motion cannot be withdrawn when it is going to be put before the House.

Progs: 25th March, 1949, Vol. V, No. 2, p. 233.

PRIVILEGE.

Molestation of members.

Molestation of or obstruction to members when coming to or going from the Assembly would be a breach of privilege.

Progs: 8th December, 1947, Vol. I, p. 105.

[For full text of ruling, see page 29.]

Molestation of member and encroachment within the precincts of the Assembly House.

Molestation of members in their Parliamentary duties and encroachment within the precincts of the Assembly House are breaches of privilege.

Progs: 8th December, 1947, p. 87.

[For full text of ruling, see page 32.]

Personal charge against member—Meaning of.

The expression "personal charge" which is mentioned in rule 12 does not relate to a criticism or a charge levelled against a Minister in discharge of his duties as a Minister. Corroboration is found by having reference to rules 26 and 78 of our rules which relate to questions and resolutions. They expressly state that in order that a question or a resolution may be admissible it must not be asked as to the character or conduct of

any person except in his official or public capacity, and a question making or implying a charge of a personal character may be disallowed. Therefore, under rule 12 a personal charge which is not allowed must be a charge which is not in connection with anything done in connection with his official or public capacity. This view is corroborated by a similar rule of the House of Commons. So far as the question of personal charge is concerned it does not relate to the charge against an official for an act done in his official capacity.

With regard to the question that the point be referred to the Committee of Privileges whether a particular charge comes within the rules or not is a matter to be interpreted by the Speaker. It is not a matter which is fit or can be sent to the Committee of Privileges. Whether a Minister has acted properly or improperly is not a question of privilege. Therefore no question to refer any matter to the Committee of Privileges arise.

Progs: 26th March, 1949, Vol. V, No. 2, p. 260.

QUESTIONS.

Questions, lapse of.

After the partition of Bengal, all questions which were sent before the partition lapsed.

Progs: 26th November, 1947, Vol. I, p. 23.

Speaker, power of, to compel answer in a particular manner.

The Speaker has no power to compel a Minister to answer a question in a particular manner. The answering of a question in the following form "the time and labour involved in obtaining and collecting the information will not be commensurate with the result" is not out of order.

Progs: 28th February, 1949, Vol. V, No. 1, p. 39.

Speaker, power of, to compel answer in any particular manner.

The Speaker has no power to compel any Minister to answer any particular question in a particular manner.

Progs: 10th September, 1948, Vol. III, No. 1, p. 80.

REFLECTION ON CHAIR.

The observation that the Speaker has been misled by the Government is a reflection upon the Chair.

Progs: 16th March, 1948, Vol. II, No. 2, p. 168.

UNPARLIAMENTARY LANGUAGE.

Asking member to go outside the House.

It is not parliamentary to ask a member to go out of the House.

Progs: 18th March, 1949, Vol. V, No. 2, p. 46.

Quotation of unparliamentary language.

In reproducing or quoting any statement made by some other person any unparliamentary expression occurring therein should not be uttered in the House.

Progs: 12th March, 1948, Vol. II, No. 2, p. 69.

Reference to a foreign friendly country, as fatherland.

It is not desirable to refer to a foreign country as fatherland of a member. But such expressions have been used and cannot be called unparliamentary.

Progs: 11th December, 1947, Vol. I, p. 141.

Reflection against member.

When the following remarks were made in respect of a member "He was not here in the Assembly although he is an Assembly member.

He was in the High Court. I do not know whether as general officer commanding he was leading the campaign of course not from here" it was ruled that the observations were undesirable and were directed to be withdrawn.

Progs: 11th December, 1947, Vol. I, p. 150.

"Audacity."

When it was observed by a certain member that the "Prime Minister yesterday had the audacity to say in the House....." it was ruled that the word "audacity" was unparliamentary in the context.

Progs: 10th September, 1948, Vol. III, No. 1, p. 100.

"Blessed fellows."

When it was said in respect of another member "every one of those blessed fellows" it was ruled that the expression "blessed fellows" should not be used.

Progs: 18th September, 1948, Vol. III, No. 1, p. 241.

"Churchill's jackals."

When it was said by a member that "the members of that party found their places as

Churchill's jackals behind him" it was ruled that the words "Churchill's jackals" were unparliamentary.

Progs: 16th September, 1948, Vol. III, No. 1, p. 180.

"*Jackal*"

The word "*Jackal*" is unparliamentary.

Progs: 26th March, 1949, Vol. V, No. 2, p. 263.

"*Dishonest.*"

The word "dishonest" is unparliamentary when it is stated that a member is dishonestly concealing documents.

Progs: 22nd March, 1949, Vol. V, No. 2, p. 111.

"*Fazlami.*"

"Fazlami" is not a term of abuse but it is desirable that such expressions should be avoided.

Progs: 18th March, 1948, Vol. II, No. 2, p. 262.

"*Lie.*"

The word "lie" is unparliamentary.

Progs: 5th January, 1948, Vol. I, p. 160

“Meanly.”

When a member says that “you are meanly insinuating as is your wont” it was ruled that the word “meanly” was unparliamentary.

Progs: 24th March, 1949, Vol. V, No. 2, p. 202.

“Stupid remark.”

The expression “stupid remark” is not unparliamentary.

Progs: 18th September, 1948, Vol. III, No. 1, p. 244.

“Traitor.”

The word “traitor” is unparliamentary if it refers to any member of the House.

Progs: 27th September, 1948, Vol. III, No. 2, p. 118.

PART II

*Decisions of Mr. Deputy Speaker Asutosh
Mallik.*

15th August, 1947—28th January, 1950.

Decisions of Mr. Deputy Speaker Asutosh Mallik

BUDGET.

Cut motion, putting of.

It is sufficient if a cut motion is put in the form that "the demand be reduced by Rs. 100". It is not necessary that the remaining portion "to raise a discussion, etc., etc." should be read out.

Progs: 24th March, 1949, Vol. V, No. 2, p. 210.

DEBATE.

Debate—Criticism of another State.

It is not permissible to criticise a foreign State.

Progs: 19th February, 1948, Vol. II, No. 1, p. 68.

Debate—Matter sub judice.

A matter which is *sub judice* cannot be discussed in the course of the debate and on a

question whether the matter is *sub judice* or not the statement of the Minister in charge should be accepted.

Progs: 28th March, 1949, Vol. V, No. 2, pp. 324, 327.

Debate—Time-limit of speech on third reading of Bill.

There is no time-limit for a speech during the debate on the third reading of a Bill.

Progs: 15th January, 1948, Vol. I, p. 330.

SELECT COMMITTEE.

Select Committee—Proceedings of—Confidential.

A member of a Select Committee is not entitled to give out what happened in the Select Committee.

Progs: 15th January, 1948, Vol. I, pp. 343, 355.

UNPARLIAMENTARY LANGUAGE.

“Wasting of time.”

It is not right to say in reference to another member's speech that he is wasting the time of the House.

Progs: 3rd March, 1949, Vol. IV, No. 1, p. 106.

APPENDIX.**1. Ruling on a question of privilege.**

MR. SPEAKER: I do not think that there can be any discussion in the House after the statement of the Hon'ble the Minister. A question has been raised by Mr. Khuda Buksh about the privilege of members, and the Prime Minister has answered that point. As this is a question of privilege of the members of the House to be allowed to enter into the House and depart in safety, I believe it is a question about which I am entitled to say a few words.

Day before yesterday I made an appeal that whatever might be the grievances of any section of the people and whatever might be the policy of the Government, it was desirable that so far as this House was concerned it should be allowed to proceed unimpeded. That appeal, unfortunately, has not been responded to. On the contrary what I find today is that members have not been allowed to enter into the House in order to carry on the proceedings of this House, by force. As a matter of fact I myself was denied entrance and I had to seek another route by which I could come in. The position is extremely serious and I have not seen the like of it

during the period that I have been in this House. It is impossible for any Government to function for one moment if its highest Parliament is not allowed to proceed unhampered and uninterfered with. I shall like again to appeal to the leaders of public opinion and to all the members of this House to exercise their utmost influence and to see that this episode comes to an end. If the public opinion be sufficiently strong I have no doubt whatsoever that we shall not see the repetition of this painful episode.

As a matter of constitutional privilege I will also like to draw the attention of the House to certain conventions which have been established by the House of Commons, the Mother of Parliaments. I have already stated that we are now functioning in a free India and the representatives of the people are in this House. If they do something wrong there are remedies for the purpose but certainly to prevent the egress and ingress of the members to this House by violence, by intimidation or by any other forcible method is absolutely unconstitutional, and I shall once more appeal to them that they should desist from this path in the interest of freedom of our country.

I cannot resist my temptation of citing one or two authorities on this point with a view

to lay emphasis upon this valued privilege of the members of this House. The House of Commons on 26th January, 1696, and 27th February, 1699, resolved that the inciting and encouraging any number of persons to come in a riotous, tumultuous or disorderly manner to this House in order either to hinder or promote the passing of any Bill or other matters pending before this House, being against the constitution and freedom of Parliament, is a high crime and misdemeanour.

On 6th June, 1780, the Commons resolved that the taking possession of the lobby and the avenue to this House by a large and tumultuous assembly of people, and maintaining the same, to the great obstruction of the business of this House though frequently desired by the Sergeant at Arms attending the House and by several members to withdraw, was a high violation of the privilege of this House, tended to control the freedom of debate and was a gross and notorious insult on the dignity and constitution of Parliament.

The Commons, on 12th April, 1733, and the Lords on 17th May, 1765, resolved that the assaulting, insulting or menacing any member of this House in his coming to or going from the House or upon the account of his behaviour in Parliament, is a high infringement of the privilege of this House, a most

outrageous and dangerous violation of the rights of Parliament and a high crime and misdemeanour.

I need not quote anything further. Though we have not as yet settled the privileges of this House, still we have got to be guided by the privileges which by long-standing tradition and convention still rule the civilized world.

In conclusion, I once more appeal to the members to exercise their influence and to see that this House functions.

Progs: 8th December, 1947, Vol. I, p. 105.

2. Ruling on a question of privilege.

MR. SPEAKER: Before we rise, I wish to draw the attention of the honourable members of this House and, through them, of the outside public that for some time past I have been noticing that so far as the precincts of this Assembly House and even the Assembly hall are concerned, there have been encroachments. We are now in a free Parliament in a free India and we should help in establishing good precedents and conventions to guide us. Whatever may be the policy of the Government and whatever may be the form of protest that may be lodged by any section of

the people, I do appeal to them that so far as this House is concerned, they should see that the dignity and honour of this House are preserved. On the last occasion I saw that even some of the members who were going out of the House were molested.

I may draw the attention of the House that so far as the House of Commons is concerned, it is a very valued privilege of the members of the House that when they come to the House or go out of the House they should not be in any way molested or interfered with. So far as the precincts of the House are concerned, the House of Commons has resolved that it is a high crime and misdemeanour for any person or group of persons to come to the House in order to have a particular Bill passed or not passed. It is the freedom of the members of the Parliament to come to and go from the Parliament and express their views freely unhampered and unmolested that will pave the way for establishing such traditions in this House which will ensure freedom for this country.

My special appeal is to our youth who have sacrificed so much for the attainment of freedom of this country. And I shall appeal to them that they should exercise some restraint in order to establish the highest traditions so far as this Assembly is concerned.

I, as the custodian of the honour, dignity and privilege of this House, make this earnest appeal to them, and I do hope that whatever may be the form of agitation or protest, so far as the Assembly precincts are concerned, the dignity and honour of this House should remain unsullied.

Progs: 8th December, 1947, Vol. I, p. 87.

3. Ruling on the admissibility of Bills.

MR. SPEAKER: Yesterday Mr. Khuda Buksh raised this point of order in connection with clause 2 of the West Bengal Special Powers Bill and the point of order was that clause 2 purported to legislate in respect of illegal acquisition, possession or use of arms, ammunition or military stores as defined in the Indian Arms Act, 1878, and Explosive Substances Act, 1908, and because in item Nos. 29 and 30 of List I of Seventh Schedule of the Government of India Act, arms, fire-arms, ammunition and explosives are within the exclusive power of the Dominion Legislature, it is not within the competence of this legislature to enact in respect of such matters.

In the Seventh Schedule of the Government of India Act there are three lists dealing with the powers of the different legislatures. List

I deals with the powers which are exclusively possessed by the Dominion Legislature. List II mentions the subjects which are within the exclusive jurisdiction of Provincial Legislatures and List III deals with the subjects over which there are concurrent powers both of the Dominion as well as of the Provincial Legislatures. Item I of List II which deals with the subjects over which the Provincial Legislature has exclusive jurisdiction mentions *inter alia* the following subjects:—

“Public order (but not including the use of his Majesty’s Naval, military or air forces in aid of civil power); preventive detention for reason connected with the maintenance of public order, persons subjected to such detention.”

In order to decide as to whether the provisions in section 2 of the Bill under consideration so far as it deals with arms, ammunition or military stores or explosives are within the competence of the Provincial Legislature or not, it is necessary to find out as to whether the provisions objected to come within this item No. 1 or not. The object of the Bill in question as defined in its preamble in respect of which also an amendment is before the House shows that in the main object of the

Bill is the maintenance of public order. The definition of subversive act as given in sub-clause (7) of clause 2 means any act which is intended or is likely *inter alia* to organise further or help the illegal acquisition, possession or use of arms, ammunitions or military stores or explosive substances. The Bill further provides for punishment in cases of such subversive acts, detention with a view to prevent such subversive acts and certain other restrictions regarding loud speakers, megaphones, etc. It is quite obvious that it is not desired by this Bill to directly legislate in respect of arms, ammunition or military stores and explosives. The real purpose is only the maintenance of public order and to provide for detention which is really included in the Provincial List.

Even if incidentally it may be stated that these provisions encroach upon the Dominion subjects, the trend of all authorities is that it is necessary to ascertain the pith and substance or true nature and character of the legislation and that even if it incidentally encroaches upon the Central subjects, it is within the competence of the Provincial Legislature to legislate—*vide* Law Reports, Indian Appeals, Vol. 74, Part I, page 23. Public Order includes public safety or interest

has been held in Federal Law Journal Reports at page 151 and page 163 and it makes the scope of public order still wider.

I am therefore of opinion that the point of order raised by Mr. Khuda Buksh is not maintainable.

Progs: 6th January, 1948, Vol. 1, p. 185.

INDEX.

ADJOURNMENT MOTION

ADMISSIBILITY

Discussion otherwise possible, 1.

PROCEDURE

Statement by Minister in opposing adjournment motions, 2.

SUBJECT MATTER

Matter of day to day administration, 2.

Discussion otherwise possible, 2.

Matter, *Sub judice*, 2 to 4.

BILL

AMENDMENT

Consequential, 5.

Language of, 5.

Circulation motion for, by member opposing the Bill, 5.

Omission of clause, 6.

Long title, 6.

Select Committee, motion for reference to, effect of passing on main motion, 6.

PROCEDURE

Discussion of third reading, 7.

Sanction of Governor—

Communication of, 7.

Putting of Questions after Minister's reply, 7.

RECONSIDERATION

After return by Governor, 8.

BUDGET**CUT MOTIONS**

Debate, 8.

Moving of, 9.

Putting of, 27.

DEBATE

Matter already discussed on another head, 9.

Matter, *sub judice*, 9.

Presence of Minister, 10.

DEBATE

Criticism of another State, 27.

Extensive Quotations, 11.

Interruption, 12.

Matter, *sub judice*, 27.

Mention of names of persons not before the House, 10.

Personal allegation, 10.

Presence of opposition, 10.

Proceedings in Cabinet, 11.

Quoting from previous speech in extenso, 11.

Reference to people outside the House, 11.

Right of reply, 12.

Time-limit of speech on third reading of Bill, 28.

DIVISION

Taking of Votes by asking members to rise in their seats, 12, 13.

LEGISLATION

Power of Legislature, 13.

To amend Central Act, 14.

ORDINANCE

Objection to laying, 14.

PARLIAMENTARY ETIQUETTE

Members to sit down when Speaker rises, 14.

Personal Explanation, 14.

POINT OF ORDER

A second point of order before the first point decided, 15.

PRACTICE

Change of year of Bill, 15.

Budget speech, circulation of, 15.

Budget speech, reading of, 16.

Member absent when motion called, 16.

Statement by member on leaving a Party, 16.

Withdrawal of motion, 16.

PRIVILEGE

Molestation of members, 17.

Encroachment within the precincts of the Assembly House, 17.

Personal charge against member 17, 18.

QUESTIONS

Lapse of, 18.

Speaker, power of, to compel answer in particular manner, 19.

REFLECTION ON CHAIR, 19.

SELECT COMMITTEE

Proceedings confidential, 28.

UNPARLIAMENTARY LANGUAGE

Asking member to go outside the House, 20.

Question of unparliamentary language, 20.

Reference to a foreign friendly Country as father land, 20.

Reflection against member, 20.

"Audacity", 21.

"Blessed fellows", 21.

"Churchill's jackals", 21.

"~~It~~", 22.

"Dishonest", 22.

"Fazlami", 22.

"Lie", 22.

"Meanly", 22.

"Stupid remark", 23.

"Traitor", 23.

"Wasting of time", 23

